

§ 10.61

17 CFR Ch. I (4–1–04 Edition)

conducted in a manner similar to that permitted at a formal hearing. All questions and testimony shall be recorded verbatim, except to the extent that all parties present or represented may agree that a matter shall be off the record.

(2) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, or any other objection to the proceeding shall be noted by the officer upon the deposition, and shall subsequently be determined by the Administrative Law Judge. Evidence objected to shall be taken subject to the objections. However, the parties may stipulate that, except as to objections to the form of questions, all objections to the matters testified to in a deposition are preserved for the hearing, whether or not raised at the time of deposition.

(3) During the taking of a deposition a party or deponent may request and obtain an adjournment to permit an application to be made to the Administrative Law Judge for an order suspending the deposition on grounds of bad faith in the conduct of the examination, annoyance, embarrassment, oppression of a deponent or party, or improper questions. An attorney who requests and obtains an adjournment for this purpose but fails, without good cause, promptly to apply for relief to the Administrative Law Judge may be found guilty of contemptuous conduct in accordance with §10.11(b) of these rules.

(f) *Procedures for use of interrogatories.*

(1) If depositions are to be taken and submitted on written interrogatories, the interrogatories shall be filed in triplicate with the application for deposition and served on the parties. Within ten days after service, any party may file, in triplicate, with the Proceedings Clerk, his objections, if any, to such interrogatories and may file such cross-interrogatories as he desires to submit. Other parties shall have ten days to file their objections to cross-interrogatories. Objections shall be settled by the Administrative Law Judge.

(2) When a deposition is taken upon written interrogatories and cross-inter-

rogatories, no party shall be present or represented and no person other than the witness, a stenographic reporter, and the officer shall be present. The officer shall propound the interrogatories and cross-interrogatories to the witness, and the interrogatories and responses thereto shall be transcribed and reduced to writing.

(g) *Use of depositions at hearing.* (1) Any part or all of a deposition, to the extent admissible under rules of evidence applied as though the witness were then present and testifying at the hearing, may be used against any party who had reasonable notice of the taking of the deposition, if the Administrative Law Judge finds that:

(i) The witness is dead;

(ii) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(iii) The witness is out of the United States at the time of the hearing, unless it appears that the absence of the witness was procured by the party offering the deposition.

(2) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(3) Objection may be made at a hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

Subpart E—Hearings

§ 10.61 Time and place of hearing.

(a) *Notice.* All parties shall be notified of the time and place of hearing, which shall be fixed with due regard for the public interest and the convenience and necessity of the parties and their representatives.

(b) *Requests for change.* A request for postponement of a hearing or for a change in the place assigned for hearing will be granted by the Administrative Law Judge only for good cause shown.